

## Message Text

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ACTION SCS-06

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E.O. 11652: N/A  
TAGS: CARR, PEPR, TU, US  
SUBJ: PRISONER TRANSFER NEGOTIATIONS

1. AT MEETING ON AUGUST 29 NEGOTIATORS AGREED ON TEXT  
OF PARTS I (DEFINITIONS), II (ENFORCEMENT OF PENAL JUDGMENTS),  
III (REQUEST FOR ENFORCEMENT), AND V (FINAL PROVISIONS).  
IMPASSE, HOWEVER, EXISTS WITH RESPECT OF PART IV (ENFORCEMENT  
OF SANCTIONS).

2. RE PART IV, TURKISH SIDE SAID THAT AT MEETING LAST  
EVENING AT MINISTRY OF JUSTICE IT WAS DECIDED THAT TURKEY  
COULD NOT ACCEPT OUR PROPOSALS FOR A MIXED, TWO-TRACK  
SYSTEM. UNDER THIS US AUTHORITIES WOULD ENFORCE, IN  
ACCORDANCE WITH US LAW, I.E. THAT WE WOULD FOLLOW  
PROCEDURES USED TO ENFORCE SANCTIONS UNDER EXISTING TREATIES  
TO WHICH US IS PARTY AND THAT TURKEY COULD FOLLOW PROCEDURES  
OF EUROPEAN CONVENTION FOR ENFORCEMENT OF SENTENCE OF TURK  
RETURNED FROM US, I.E., THAT TURKISH COURT WOULD ISSUE SUBSTITUTED  
SENTENCE. TURKS BELIEVE THAT EUROPEAN CONVENTION AND TURKISH  
LEGAL TRADITION MAKE IT FUNDAMENTAL PRINCIPLE OF LAW THAT A  
FOREIGN CRIMINAL JUDGMENT CAN ONLY BE ENFORCED BY ACTION

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OF A COURT. THEY THEREFORE FIND THEMSELVES UNABLE TO ACCEPT  
ARRANGEMENT WHERE US PAROLE BOARD RATHER THAN COURT DETERMINES  
PERIOD OF INCARCERATION.

3. TURKS HAVE PROPOSED THAT CONFLICT BETWEEN OUR DIFFERENT  
APPROACHES SHOULD BE RESOLVED NOT BY A DUAL SYSTEM BUT BY  
PASSAGE OF LEGISLATION IN US TO ENLARGE JURISDICTION OF OUR

COURTS TO PERMIT THEM TO IMPOSE SUBSTITUTED SENTENCES ON PERSONS TRANSFERRED UNDER TREATY. DELEGATION STATED THAT THIS WAS NOT BALANCED RESOLUTION OF PROBLEM AND THAT IN ANY EVENT IT SEEMED HIGHLY DOUBTFUL THAT US CONGRESS WOULD BE INCLINED TO CHANGE OUR SYSTEM. HOWEVER, US DELEGATION UNDERTOOK TO REPORT PROPOSAL TO WASHINGTON.

4. OUR DISCUSSIONS WITH THE TURKS SUGGEST THAT THEIR INSISTENCE ON US USING COURTS IN TREATY CASES MAY BE BASED NOT ONLY ON THEIR LEGAL TRADITION BUT ALSO ON LACK OF FULL UNDERSTANDING OF LEGAL POSITION OF THE PAROLE BOARD AND REGULATIONS UNDER WHICH IT OPERATES. THERE IS AN OUTSIDE REPEAT OUTSIDE CHANCE THAT IF THEY COULD BE CONVINCED THAT PAROLE COMMISSION IN ITS COMPOSITION AND FUNCTIONING HAS MANY COMMON ELEMENTS WITH COURTS IN TURKEY THEY MIGHT BE WILLING TO REASSESS OUR TWO TRACK PROPOSAL. FOR THIS REASON WE WILL BE ASKING DEPARTMENT TO PROVIDE US BY TELEPHONE WITH OVERVIEW OF PAROLE COMMISSION REGULATIONS. WE WOULD APPRECIATE RECEIVING TELEGRAPHICALLY SUPPLEMENTAL MATERIAL THAT MIGHT BE INCORPORATED IN A DESCRIPTION OF THE PAROLE BOARD THAT WOULD EMPHASIZE TO THE TURKS ITS STATUS AS A PERMANENT, FULL-TIME PROFESSIONAL BODY CHARGED WITH A TASK THAT POSSESSES JUDICIAL CHARACTERISTICS.

5. A FINAL ELEMENT IN TURKISH POSITION IS THEIR FEELING THAT THEY ARE LOCKED IN BY EUROPEAN CONVENTION AND CANNOT LIMITED OFFICIAL USE

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AGREE TO A DIFFERENT REGIME WITH A THIRD STATE. WE POINTED OUT THAT BOTH GENERAL PRINCIPLES OF INTERNATIONAL LAW AND ARTICLE 64 OF EUROPEAN CONVENTION ITSELF FAILED TO SUPPORT THAT POSITION. NEVERTHELESS, IT IS CLEAR THAT TURKEY DOES NOT WISH TO BE FIRST PARTY TO EUROPEAN CONVENTION TO DEVIATE FROM THAT SYSTEM. ONE CONSIDERATION MAY BE THAT DEVIATING TO SUCH AN EXTENT FROM CONVENTION IN ARRANGEMENT WITH THE US COULD INCREASE THE POLITICAL DIFFICULTIES GOT WILL HAVE IN GAINING PARLIAMENTARY APPROVAL FOR THE TREATY.

6. ACTION REQUESTED: RE PARA 4, PLEASE HAVE ABBELL'S SECRETARY CABLE TEXT OF DECISION OF PAROLE COMMISSION IN TIEGEN V. BELL DECISION (APPEARS AS EXHIBIT TO GOVERNMENT'S ANSWER FILED IN US DISTRICT COURT IN DENVER). IF SHE NOT AVAILABLE, EARL KAPLAN ON 739 2386 SHOULD BE ABLE PROVIDE AUGUST 30. PURPOSE OF OUR HAVING TEXT IS TO DEMONSTRATE TO TURKS THAT COMMISSION RENDERS JUDICIAL TYPE OPINIONS. WE PLAN TO MAKE SUCH A CASE WHEN WE RECONVENE THURSDAY, AUGUST 31. AT THIS TIME WE WOULD ALSO -- UNLESS DEPARTMENT INSTRUCTS OTHERWISE-- INDICATE THAT USG CANNOT ACCEPT TURKISH SUGGESTION TO SEEK NEW LEGISLATION INDICATING THAT THERE WOULD BE NO HOPE FOR CONGRESSIONAL APPROVAL, SHOULD

ADMINISTRATION SEEK THIS LEGISLATIVE CHANGE.

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